APPENDIX 1

DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
Washington

May 28, 1924.

The Honorable
The Secretary of the Interior.

Dear Mr. Secretary:

You request my opinion in the matter of refunding advance royalties to purchasers of coal and asphalt deposits underlying the segregated coal and asphalt land of the Choctaw and Chickasaw Indians, Oklahoma.

These segregated lands form part of the domain patented in fee March 23, 1842, to these Indians in common pursuant to the treaties of September 27, 1830 (7 Stat., 333), and January 17, 1837 (11 Stat., 573). Under section 21 of the act of June 28, 1898 (30 Stat., 495-503), commonly known as the Atoka agreement, and the act of July 1, 1902 (32 Stat., 541), known as the supplemental agreement, allotments in severalty were made to individual members of those tribes but the coal and asphalt lands approximating some 450,000 acres, were segregated or reserved for the benefit of the Indians in common. Anterior to 1898, however, the tribal officers had entered into a series of leases covering some of these coal and asphalt lands, royalty therefrom being payable at specified rates per ton for the benefit of the tribes at large. These earlier negotiations between the Indians and their lessees were ratified and confirmed to some extent by the Atoka agreement, additional leases were provided for to run for terms of 30 years, royalty being fixed at 15 cents per ton for coal and 60 cents per ton for asphalt with a

proviso under which the Secretary of the Interior could increase or decrease the rate of royalty whenever he deemed it for the best interest of the Indians so to do (30 Stat., page 510). For a limited period the coal operators were required to pay 15 cents per ton royalty on "screened coal" but on protest and after an extensive heading the rate of royalty on coal was fixed at 8 cents per ton "run of mine." The asphalt deposits proved to be such a negligible factor that for the purpose of this discussion they may be disregarded other than to observe that both classes of deposits are controlled by the same legislation and the same underlying fundamental principles, with particular reference to advance royalties the act of 1898, *supra*, provides:

> "All lessees shall pay on each coal or asphalt claim at the rate of one hundred dollars per annum, in advance, for the first and second years, two hundred dollars per annum in advance, for the third and fourth years, and five hundred dollars for each succeeding year thereafter. All such payments shall be treated as advanced royalty on the mine or claim on which they are made, and shall be a credit as royalty when each said mine is developed and operated, and its production is in excess of such guaranteed annual advance payments, and all persons having coal leases must pay said annual advanced payments on each claim whether developed or undeveloped. *Provided, however,* That should any lessee neglect or refuse to pay such advanced annual royalty for the period of sixty days after the same becomes due and payable on any lease, the lease on which default is made shall become null and void, and the royalties paid in advance thereon shall then become and be the money and property of the Choctaw and Chickasaw nations."

The supplemental agreement of 1902, *supra*, sections 56 to 62, inclusive, contemplated that the segregated

coal and asphalt lands including the mineral deposits therein, whether leased or unleased, should be sold within three years from the date of ratification of that act. To this end further leases were prohibited but by the act of April 21, 1904 (33 Stat., 189-209), Congress directed that the leased lands should be withheld from sale until otherwise provided, thus leaving the unleased areas only to be offered for sale. In 1905 an effort was made to dispose of the unleased lands but all bids therefor were rejected by the Secretary of the Interior as being too low. By the act of April 26, 1906 (34 Stat., 137, 142), Congress further directed that all of these segregated lands, both leased and unleased, should be withheld from sale until the existing leases shall have expired (about 1932) "or until otherwise provided by law."

The matter rested thus, legislatively, until 1912 when by the act of February 19 of that year (37 Stat., 67), Congress provided for an appraisement and sale of the *surface* of these lands subject to all rights of the mineral lessees and giving also to those lessees certain preferential rights to purchase part of the surface leased by them at the appraised price; See *McAlester-Edwards Coal Company* v. *Secretary of the Interior* (277 Fed., 573 and 202 U. S., 200). Between the years 1909 and 1916 at least approximately 2,500,000 tons of coal were mined from these lands annually, some 100,000 acres in the aggregate being then covered by 113 leases, all of which, however, were not producing or in operation. At any rate royalty on the coal annually produced at eight cents per ton yielded the Indians about $200,000 per annum. See hearings on H. R. 12544, 64th Congress, which ultimately became the act of February 8, 1918 (40 Stat., 433). The latter act provided for the appraisement and sale of the coal and asphalt deposits in these segregated lands under rules and regulations to be prescribed by the Secretary of the Interior, at not less than the appraised price.

Section 4 of this act reads in part:

"That such deposits of coal or asphalt on the leased lands shall be sold subject to *all rights* of the lessee and that any person acquiring said deposits of coal or asphalt shall take the same subject to said rights and acquire the same under the express understanding and agreement that the Department of the Interior will cancel and withdraw all rules and regulations and relinquish all authority heretofore exercised over the operation of said mines by reason of the Indian ownership of said property and that said properties thereafter shall be operated under and in conformity with such laws as may be applicable thereto, and that *advance royalty paid by any lessee and standing to the credit of said lessee shall be credited by said purchaser to the extent of the amount thereof,* and that no royalties shall be paid by said lessee to said purchaser until the credit so given shall be exhausted at the rate of 8 cents per ton mine run, and that the royalty to be paid thereafter by said lessee to said purchaser shall be 8 cents per ton mine run of coal, and that any lessee may, at any time after completion of such sale, transfer or dispose of his leasehold interest without any restriction whatever; and that any lessee shall have the preferential right, provided the same is exercised within ninety days after the approval of the completion of the appraisement of the minerals as herein provided, to purchase at the appraised value any or all of the surface of the lands lying within such lease held by him and heretofore reserved by order of the Secretary of the Interior and upon the terms as above provided, and shall also have the preferential right except as herein otherwise provided to purchase the coal deposits embraced in any lease held by such lessee by taking same at the highest price offered by any responsible bidder at public auction at not less than appraised value; and if any lessee becomes the pur-

chaser of any coal deposits on any undeveloped lease owned by him, then one-half of the advance royalties paid by any lessee on such lease shall be credited on the purchase price thereof, and any residue of advance royalties heretofore paid by any lessee shall be credited to such lessee on account of any production of coal on any other lease which he may own and operate." (Italics added.)

The mineral deposits underlying these lands were advertised and offered for sale, in accordance with the terms of the foregoing legislation and the regulations promulgated by this Department to carry out the provisions of that act expressly declare:

"Until full and final payment is made for any tract, leased or unleased, sold under these regulations, the purchaser shall pay, or cause to be paid to the Superintendent for the Five Civilized Tribes, monthly, 8 cents per ton for all coal mined (mine run), and 10 cents per ton for asphalt mined, such payments to be held by said Superintendent to be applied on the purchase price, and upon request of the purchaser may be applied in payment of any installment, when due. Any unused advance royalty to the credit of a lessee under existing leases shall be paid by said Superintendent, when final payment of the purchase price is made, to the purchaser for the benefit of the lessee under the terms of the lease and the Act of Congress, approved February 8, 1918; Provided, however, that if any lessee becomes the purchaser of any coal deposits on any undeveloped lease owned by him, then one-half of the advance royalties paid by any lessee on such lease shall be credited on the purchase price thereof, and any residue of advance royalties heretofore paid by any lessee shall be credited to such lessee on account of any production of coal on any other lease which he may own and operate."

Evidently, therefore, upon payment of the purchase price in full the purchaser then becomes entitled to the advance royalty, or more accurately speaking, the unused advance royalty standing to the credit of the tract so purchased. Further, that where a lessee purchased the coal deposits on any undeveloped lease owned by him he thereupon became entitled to credit on the purchase price to the extent of one-half of the advance royalties paid, the remaining half to be credited to such lessee on account of production on any other lease owned by him.

When we analyze the situation behind all this, manifestly the plain intent is that the Indians shall receive full and adequate consideration for their property but at the same time substantial justice shall be done to the lessees. The hearings on the bill last herein referred to clearly shows this. The advance royalties, in effect, simply constitute a deposit to be applied on production as and when had. Forfeiture is not provided for except such as may be found in the proviso reproduced above from the act of June 28, 1898, which obtains only where the lessee neglected or refused to pay the advance royalties as and when due. With such royalties as have heretofore become forfeited, however, we are not here dealing, the question now before me relating to the unused advance royalties standing to the credit of given tracts of land which have been sold and fully paid for. The Indians have heretofore received the appraised price and frequently more than the appraised price (the highest bid price) for both the surface and the coal deposits underlying that surface, and I am unable to see wherein we can now demand for the Indians retention of the advance royalties which Congress has directed to be credited by the purchaser in favor of the lessee to the full extent thereof.

One other point remains to be considered. These deposits were offered for sale and were sold, in the main, at McAlester, Oklahoma, on December 11, 12, 13, and 14, 1918. Owing to unavoidable administrative

and other delays approval of these sales by the Secretary of the Interior was not had in many instances for several months later, notably that of the Kala-Inla Coal Company, purchaser of tract No. 34-B, McAlester district, which sale was not approved until August 29, 1919, the agreed price being $21,420. Under Section 2 of the act of February 8, 1918, *supra*, the purchasers of these deposits were required to pay 20 per cent of the purchase price in cash and the remainder in four equal annual installments "from the date of sale," the deferred payments to bear interest at 5 per cent per annum. Where production was in progress necessarily coal in varying and frequently considerable quantities was being mined and removed from these premises between the date of sale and the date of approval in each case. On this production the usual royalty at 8 cents per ton was demanded and paid as a measure of protection for the Indians in case of default by the purchaser to meet subsequent installments of the purchase price when due. It was first held by the Department that as the sale was not complete until approved by the Secretary of the Interior, the royalty on production between the date of sale and the date of approval belonged to the Indians. On protest by the Kala-Inla Company, however, the Department on December 26, 1922, ruled that the purchaser should be required to pay interest on the deferred payments from date of sale, rather than from the date of approval, and that upon final payment of the purchase price the purchaser then became entitled to a refund of the royalty on the coal removed from the tract between these two dates. I regard the latter as the correct view, which certainly is more in harmony with the letter and intent of section 2 of the act of February 8, 1918, *supra*. This is apparent from a moment's consideration. These deposits were sold as of a given date, the purchaser bought as of that date and on payment of the purchase price in full with interest the purchaser then clearly becomes entitled to the royalty on such deposits as may

have been removed from the premises as purchased subsequent to the date of sale.

Respectfully,

(Signed) JOHN H. EDWARDS,
Solicitor.

Approved: May 28, 1924.

(Signed) F. M. GOODWIN,
Assistant Secretary.

APPENDIX 2

November 22, 1930.

The Honorable
The Secretary of the Interior.

Dear Mr. Secretary:

You have requested my opinion in the matter of the disposition to be made of certain payments made to the Superintendent of the Five Civilized Tribes by the Kali-Inla Coal Company, lessee-purchaser of segregated coal and asphalt deposits underlying Choctaw and Chickasaw Indian lands in Oklahoma during the period from December 11, 1918, date of sale to the company, and August 29, 1919, date of approval of the sale by the Secretary of the Interior. You further request that this question be considered in the light of other considerations, first, the power of the Secretary of the Interior to review and set aside decisions of his predecessors in office in this matter, and second, the hearing which the administrative construction and practice of the Department may have upon the answer to the principal question.

It appears that the deposits in question were leased with the approval of the Secretary of the Interior to the Choctaw, Oklahoma and Gulf Railroad Company on February 18, 1899, for a period of 30 years (leases Nos. 10 and 11). The leases were made and approved under authority of section 29 of the act of June 28, 1898 (30 Stat. 495), and the rate of royalty on coal was ultimately fixed at eight cents per ton "run of mine." The rate of royalty on asphalt was fixed at ten cents per ton but with this product we are not much concerned due to its negligible value. By assignments duly approved by the Secretary of the Interior the leases were transferred in part to the Kali-Inla Coal Company.

December 11, 1918, while the leases were still in effect, the Kali-Inla Coal Company purchased at public auction sale, subject to the approval of the Secretary of the Interior, for a consideration of $21,420, the coal and asphalt deposits embraced in its leasehold, such sale being had under authority of the act of February 8, 1918 (40 Stat. 433), and in conformity with regulation prescribed by the Secretary thereunder. The purchase price under section 2 of the act was payable 20 per cent in cash and the balance in four equal annual installments from the date of sale, the deferred payments to bear interest at five per cent per annum and to mature and become due before the expiration of four years after the date of sale.

The act further provided (section 7):

That when the full purchase price for any property sold hereunder is paid, the chief executives of the two tribes shall execute and deliver with the approval of the Secretary of the Interior, to each purchaser an appropriate patent, conveying to the purchaser the property so sold: *Provided*, That the purchaser of any coal or asphalt deposits shall have the right at any time before final payment is due to pay the full purchase price on said coal and asphalt deposits, with accrued interest, and shall thereupon be entitled to a patent therefor as herein provided.

The sale was not approved by the Secretary of the Interior until August 29, 1919, and in the interval the lessee-purchaser continued to make the payment of eight cents per ton on coal mined, the rate specified in the leases, such payments amounting to $1,683.65. This amount the company contends belongs to it rather than to the Indians and insists that it be credited upon the purchase price. If this be done, the company will have completed its contract of purchase and would now be entitled to patent. The question thus presented has been before the Department on various occasions in the past and the record discloses a series of depart-

mental decisions somewhat remarkable for their inconsistency.

It was first held on December 10, 1919, that the sale of any tract is not complete until approved by the Secretary of the Interior and any royalty due under the leases prior to the date of such approval belongs to the Choctaw and Chickasaw Tribes, and any amounts due subsequent to that date belong and should be paid by the lessee to the purchaser. Consistent with this holding, it was further held on March 26, 1920, that the purchaser should be charged interest on deferred payments from the date of approval of the sale rather than from the date of sale. December 26, 1922, however, the Department, upon application of the Kali-Inla Company, reversed and modified the former holdings and ruled not only that the interest on deferred payments should be collected from the date of sale but that the royalties on coal mined between the date of sale and approval thereof should be credited to the purchaser on final payment of the purchase price. The latter holding was upheld as in conformity with the applicable law by the then Solicitor for this Department in an opinion rendered May 28, 1924 (M 7316). Notwithstanding these rulings, final adjustment with the Kali-Inla Company was not had for the reason apparently that there were pending other claims of a like nature involving much larger amounts, and in addition attorneys for the Choctaw and Chickasaw Tribes actively opposed any settlement along the proposed lines. Finally, on December 10, 1928, the Department vacated the decision of December 26, 1922, and disallowed the claim of the Kali-Inla Company to the payments made between the date of sale and date of approval thereof, and on December 22, 1929, served notice of intention to cancel the sale unless payment of the amount claimed to be due was made within the time specified.

With this preliminary statement we turn first to the question of the authority of the Secretary of the In-

terior to reconsider and set aside the decision last mentioned, a matter upon which, fortunately, we are not without guidance in judicial decisions. To be sure the adjudicated cases in many instances relate to the action of the Secretary of the Interior upon public land matters, but inasmuch as the powers of the Secretary in the administration of the affairs of the Indians are substantially the same as those held by him over the disposition and sale of the public lands (*Knight* v. *United States Land Association*, 142 U. S. 161, 182), his reviewing authority in both classes of cases is controlled by the same underlying fundamental principles. See *Knight* v. *Lane* (228 U. S. 6).

Under prevailing decisions of the courts, finality precluding reexamination attaches to decisions of the Secretary of the Interior upon matters arising within his jurisdiction where there is involved the doing of some act such as the issuance of a final fee simple patent which when done terminates the jurisdiction of the Department. *Noble* v. *Union River Logging Railroad Company* (147 U. S. 165); *Lane* v. *Watts* (234 U. S. 525); *West* v. *Standard Oil Company* (278 U. S. 200, 218); *Larkin* v. *Paugh* (276 U. S. 431). But as stated in *Brown* v. *Hitchcock* (173 U. S. 473, 476), "Until legal title to public land passes from the Government, inquiry as to all equitable rights comes within the cognizance of the Land Department." Again in *New Orleans* v. *Paine* (147 U. S. 261, 266), it was said and this statement was repeated with approval in *Michigan Land and Lumber Company* v. *Rust* (168 U. S. 589, 594), and *Knight* v. *Lane, supra*:

> "Until the matter is closed by final action, the proceedings of an officer of a department are as much open to review or reversal by himself, or his successor, as are the interlocutory decrees of a court open to review upon the final hearing."

Also in *Beley* v. *Napthaly* (169 U. S. 353, 364), the court said:

The fact that a decision refusing the patent was made by one Secretary of the Interior, and, upon a rehearing, a decision granting the patent was made by another Secretary of the Interior, is not material in a case like this. It is not personal but an official hearing and decision, and it is made by the Secretary of the Interior as such Secretary, and not by an individual who happens at the time to fill that office, and the application for a rehearing may be made to the successor in office of the person who made the original decision, provided it could have been made to the latter had he remained in office.

In *Knight* v. *Lane, supra*, the court had under consideration among other things the authority of the Secretary of the Interior to reconsider and vacate his former decision in the matter of a contest between the Cherokee Indians in Oklahoma over an allotment of land provided for in the act of July 1, 1902 (32 Stat. 725), the terms of which act provided for the issuance of patent for the allotment subject to the approval of the Secretary of the Interior. Sustaining the Secretary's authority to reconsider his prior decision the court said:

The question, therefore, is reduced to this: Was his power of decision exhausted when on May 10, 1909, he approved the proposed adjustment? To this there can be only a negative answer. That decision was not final, but interlocutory. In terms it shows that the patent was not to be effective or delivered until he approved it, and an act of 1902 declared that it must have his approval (Sec. 59). Not only so, but, no statutory provision opposing, effect was to be given to the regulation providing for rehearings and allowing thirty days within which to apply therefor. Thus, it was as if the decision itself had made provision for a rehearing. Proper regard must also be had for the fact that the act of April 26, 1906, 34 Stat. 137, c. 1876, Sec. 5, expressly contemplated that the title should not pass until the patent was recorded in the office of the Com-

missioner to the Five Civilized Tribes. In such a case we perceive no reason for departing from the rule applicable to kindred proceedings in the Land Department.

The court then quoted at some length from *Brown* v. *Hitchcock, supra,* and repeated "as entirely opposite" the statement reproduced above from *New Orleans* v. *Paine.*

The question was again presented to the Supreme Court in the recent case of *Wilbur* v. *United States* (281 U. S. 206). There the secretary, following an opinion given by the Solicitor for the Department, had ruled in 1919 that certain children of an enrolled mixed-blood mother were entitled to share in certain interest annuities payable to the Chippewa Indians. In 1927 a succeeding Secretary, adopting and applying an opinion given by a succeeding Solicitor, held that the children in question were not entitled to share in the interest annuities and accordingly directed that their enrollment be canceled and no further payments made to them. It was contended among other things that the decision of 1927 was void in that the then Secretary was without power to reconsider and revoke the decision of his predecessor in 1919 on the same matter. Answering this contention the Supreme Court said:

If at the time of the decision in 1927 the Secretary of the Interior was without power to reconsider and revoke the decision of 1919, it well may be that the realtors would be entitled to the relief by mandamus which they seek. But there was no such want of power. The decision in 1919 was, not a judgment pronounced in a judicial proceeding, but a ruling made by an executive officer in the exertion of administrative authority. That authority was neither exhausted nor terminated by its exertion on that occasion, but was in its nature continuing. Under it the Secretary who made the decision could reconsider the matter and revoke the decision if found wrong; and so of his successor. The latter was charged, no less than the former had been,

with the duty of supervising the payment of the interest annuities and of causing them to be distributed among those entitled to them and no others; and if he found that the individuals not so entitled were sharing in the annuities by reason of a mistaken or erroneous ruling of the former his authority to revoke that ruling and stop further payments under it was the same as if it had been his own act. The powers and duties of such an office are impersonal and unaffected by a change in the person holding it.

To the same effect is *West* v. *Standard Oil Co.*, *supra*. There the court held that the Secretary was not precluded from reopening an inquiry originally made by a former Secretary to determine whether land claimed under a school land grant to the State of California was known to be mineral when the survey was approved, saying:

If at the time of Secretary Work's order the Department still had jurisdiction of the land, he possessed the power to review the action of his predecessor and to deal with the matter as freely as he could have done if the dismissal of the proceedings had been his own act or that of a subordinate official. For, so long as the Department retains jurisdiction of the land, administrative orders concerning it are subject to revision.

Applying the foregoing principles to the facts of the case at hand, it becomes apparent that the Secretary's power of decision was not exhausted by the decision of December 10, 1928. Patent for the property purchased has not yet issued and hence the event which otherwise would have terminated the jurisdiction of the Department has not occurred. Moreover, the patent to be effective must have the approval of the Secretary and the statute expressly declares that it shall issue only when the full purchase price is paid. Payment of the purchase price in full is thus a condition which the purchaser must perform before he is entitled to patent.

The duty of determining that the condition has been met is committed by the statute to the Secretary and this necessarily includes authority to determine collateral questions such as here involved having a material bearing upon the purchaser's right to patent even though this may entail an inquiry into the correctness of previous findings upon the same matter by a former Secretary. This being so, we pass to the bearing which the administrative construction and practice of the Department should have in considering the matter anew.

It is hardly necessary to cite authorities upon the point that the long-continued, uniform construction of a statute by the administrative authorities entrusted with its execution is entitled to the greatest respect. But this rule is without application here for the reason that the departmental construction as hereinbefore pointed out has been neither uniform nor continuous and in no event can be said to have ripened into any settled practice. Under such circumstances, the courts if called upon to consider the matter would do so without regard to the departmental construction or practice, *United States* v. *Haley* (160 U. S. 136), and I see no good reason why the Department should be guided by any different rule.

This brings us to the question of whether the royalties accruing on coal mined between the dates of sale and approval belong to the Indians or the purchaser. The provisions of the act of 1918 having a particular bearing on this question read:

That the Secretary of the Interior is hereby authorized to sell the coal and asphalt deposits leased and unleased, in the segregated mineral area of the Choctaw and Chickasaw Nations, in Oklahoma, in the manner hereinafter set forth.

Before offering such coal and asphalt deposits for sale the Secretary of the Interior, under such rules and regulations as he may prescribe, shall cause the

same to be appraised. Such appraisement, both as to leased and unleased lands, shall be described in tracts to conform to the descriptions of the legal subdivisions heretofore designated by the Secretary of the Interior, and shall be completed within six months after the passage of this Act.

Sec. 2. That the sale of such deposits shall be thoroughly advertised, and shall not later than six months from the final appraisement be offered for sale to the highest bidder at public auction in tracts to conform with such appraisement at not less than the appraised value so fixed, except that isolated tracts of less than nine hundred and sixty acres may be sold separately under like provisions; Provided, That twenty per centum of the purchase price shall be paid in cash, and the remainder shall be paid in four equal annual payments from the date of the sale, and all deferred payments on all deposits sold under the provisions of this Act shall bear interest at the rate of five per centum per annum, and shall mature and become due before the expiration of four years after the date of such sale.

The regulations approved September 24, 1918, provide, among other things, for the payment of eight cents per ton on coal mined to the Superintendent for the Five Civilized Tribes to be applied on the purchase price and then declare (section 13):

All royalty paid on coal or asphalt mined subsequent to the date of approval of the sale shall belong to the purchaser, subject to the requirement of a certain amount per ton, as above stated, to be paid to the Superintendent of the Five Civilized Tribes, to be applied on the purchase price, which is to protect the Choctaw and Chickasaw Tribes from loss on account of coal removed in case the tract should be forfeited before final payment is made.

While the above statement recognizes the right of the purchaser to royalties accruing subsequent to the

date of approval of the sale, the regulations are silent as to the disposition to be made of royalties accruing prior to that time and after the date of sale. However, the advertisement containing the terms and conditions upon which the deposits would be offered for sale to the public contains the following.

All royalties on tracts now under lease, and on any lease made on tracts subsequent to the sale and before final payment, must be paid to the Superintendent for the Five Civilized Tribes and be held by him *and paid to the* purchaser after final payment has been made or in annual installments in the discretion of the Secretary of the Interior.

As the deposits were advertised for sale on December 11, 1918, the foregoing provision, which became part of the contract of sale and binding upon the parties thereto, can only mean that the royalties from and after that date belong to the purchaser, provided, of course, he completes his contract of purchase. While the express terms of the contract of purchase thus appear to determine the ownership of the royalties during the period here in question, it may be well to point out that recognition of the right in the purchaser to such royalties is in entire harmony with the act of 1918, particularly section 2 above, which in imposing the obligation upon the purchaser to pay interest on the deferred payments from the date of sale and requiring completion of the contract before the expiration of four years from the date of sale, manifests a clear intent that the sale shall become effective on that and not on some later date. True, approval of the Secretary of the Interior was essential, but in giving such approval the Secretary merely sanctioned what had already been done and the approval when given related back and took effect as of the date of sale. See *Anchor Oil Co.* v. *Gray* (257 Fed. 277), affirmed (256 U. S. 519); *Lykins* v. *McGrath* (184 U. S. 171). The purchaser then became the equitable owner of the property purchased (see *Hall* v. *Ely,* 108 Atl. 370),

with all the rights incident to such ownership, including the benefit of the royalties accruing on coal thereafter mined.

Very truly yours,

(Signed) E. C. FINNEY,
Solicitor.

Approved: November 22, 1930.

(Signed) Jos. M. DIXON,
First Assistant Secretary.